

March 15, 2022

Via Email (abigail.taylor@state.ma.us; sandra.wolitzky@state.ma.us)

Abigail Taylor, Chief
Civil Rights Division
Sandra Wolitzky, Deputy Chief
Health Care Division
Office of Massachusetts Attorney General
Attorney General Maura Healey
1 Ashburton Place
Boston, MA 02108

Via Email (Margret.R.Cooke@MassMail.State.MA.US)

Margret R. Cooke, Commissioner
Department of Public Health
250 Washington Street
Boston, MA 02108

**Re: Request for Joint Investigation into Discrimination and
Deficient Quality of Care at East Boston Neighborhood Health Center**

Dear Chief Taylor, Deputy Chief Sandra Wolitzky, and Commissioner Cooke:

On behalf of Centro Presente, a member-driven, state-wide Latin American immigrant organization dedicated to the self-determination and self-sufficiency of the Latin American immigrant community of Massachusetts, we hereby request that the Massachusetts Attorney General's Office ("AGO") and the Department of Public Health ("DPH") open a joint investigation into serious allegations of discrimination and deficient quality of care at East Boston Neighborhood Health Center ("EBNHC"). The problems identified below are systemic and persistent and are causing ongoing harm to the patients who rely on EBNHC for critical healthcare needs – particularly immigrants, MassHealth insurance holders, and women. The impacted patients have expressed serious concerns that the substandard care they received at EBNHC was due to their race, national origin, sex, and insurance.

Lawyers for Civil Rights ("LCR") is a legal non-profit organization that works with communities of color and immigrants to fight discrimination and foster equity. Together with Centro Presente, we have met several times with the AGO to discuss this matter and have appreciated your desire and willingness to discuss this pressing problem. In this letter, we summarize some of the most salient evidence presented to date and formally request a joint investigation under the joint jurisdiction of the AGO and DPH into the concurrent and overlapping civil rights and public health law violations at EBNHC.

I. Background of Complaints Made Against EBNHC

EBNHC is the largest community health center in Massachusetts and one of the largest in the nation. It serves East Boston, Chelsea, Revere, Winthrop, Everett, and the South End.¹ It provides primary care services as well as specialty care, serving as a critical point of healthcare access for many in Boston’s immigrant communities.

As Attorney General Healey has recently highlighted in a comprehensive report on equity in healthcare, community health centers play a crucial role in efforts to reduce racial and ethnic healthcare disparities in Massachusetts.² Those disparities are, unfortunately, enormous and wide-ranging. As the AGO’s recent report summarizes in stark terms: Massachusetts “residents of color are less healthy and die younger than white residents.”³ For practically every type of condition, including heart failure, stroke hospitalization, and diabetes-related death, Massachusetts residents of color suffer at significantly higher rates than do their white counterparts.⁴ As the primary healthcare providers in many of Massachusetts’ communities of color, community health clinics are crucial to combatting these alarming racial and ethnic health care disparities.

Unfortunately, EBNHC is failing to meet this critical role. As Centro Presente and its members have documented, and as summarized below, there is evidence that many patients who rely on EBNHC for their healthcare are receiving substandard care. Reported problems range from inadequate communication and the failure to perform necessary tests or lab work, to misdiagnosis. In reported cases, the consequences of this substandard care appear dire: increased pain and suffering, worsened conditions, and even death – precisely the outcomes that underlie the healthcare disparities that the Attorney General and public health officials have rightfully decried.

II. EBNHC's Conduct Violates Civil Rights Laws

The emerging patterns of misdiagnosis, lack of quality care, and denial of adequate services disproportionately affect several overlapping groups that are protected by law: immigrants, those who rely on MassHealth, and women. For these reasons, an investigation into EBNHC’s conduct must be deliberately and intentionally conducted through the lens of Massachusetts’ civil rights laws.

Centro Presente has shared a number of specific – and alarming – incidents with the AGO, and we have appreciated your willingness to schedule meetings with individual patients who have suffered trauma as a result of EBNHC’s substandard care.

¹ See East Boston Neighborhood Health Center, *About Us*, <https://www.ebnhc.org/en/about-us.html>

² See Office of the Attorney General, “Building Towards Racial Justice and Equity in Health in Massachusetts: A Call To Action,” available at <https://www.mass.gov/doc/building-toward-racial-justice-and-equity-in-health-a-call-to-action/download>.

³ *Id.*

⁴ *Id.*

An Appendix to this letter compiles and summarizes nine reports, with details that are chilling and highly concerning. These narratives also reveal how the problems associated with EBNHC's care fall disproportionately on immigrants, MassHealth insurance holders, and women (with some individuals and families falling into multiple categories). For example:⁵

- **Maria A.**, a Honduran immigrant woman on MassHealth, brought her infant child to EBNHC for medical care, only to be sent home. The following day, her baby's condition worsened, and she brought him back to EBNHC. This time, staff called for an ambulance to rush him to a hospital, but it was too late. Tragically, the baby died en route to the emergency room. *See* Appendix, Case 1.
- **Edith C.**, a Salvadoran immigrant woman took her two-year-old son to EBNHC in early September 2021 because she found a bump on his penis. The nurse examined the child, and they were sent home. Approximately a week later, the child's condition worsened. His penis was swollen and red, and had a bad odor, and he was experiencing extreme pain. The mother decided to take him to the emergency room at the Boston Medical Center (BMC), where he was examined by doctors, who found that he had an advanced infection caused by bacteria. He was prescribed antibiotics, ointments, and pain medicine. The doctors explained to her that the infection was advanced and should have been diagnosed and treated much earlier. *See* Appendix, Case 3.
- **Chloe F.**, a woman of Salvadoran descent on MassHealth, went to EBNHC in November 2021 because she had chest pain, fatigue, and heart palpitations. An EKG was run, and a doctor deemed the results to be normal. The doctor told Chloe that she had an irritation in her lungs and prescribed ibuprofen. Chloe's symptoms worsened, so she sought treatment at BMC, where she was diagnosed with stage three lung cancer. *See* Appendix, Case 6.

EBNHC is a place of public accommodation, since it solicits the public, specifically patrons seeking healthcare. *See* M.G.L. c. 272 §§ 92A, 98. As such, it is prohibited from discriminating against patients on the basis of race, color, national origin, or sex. *Id.*⁶ As the Supreme Judicial Court has held, Massachusetts' public accommodations statute is broadly remedial. *Currier v. Nat'l. Bd. of Medical Examiners*, 462 Mass. 1, 18 (2012). This means that the law's prohibition against discrimination reaches not just instances where individuals are excluded from entry into a physical structure, but where service is provided on an unequal basis. *Id.* at 19. Moreover, there is no requirement to show that the unequal treatment is intentional. Rather, liability can be established if unequal treatment falls disproportionately on a protected class. *Id.* at 20.

⁵ Patient names have been anonymized in this letter. Full names and further detail about these incidents, as well as other incidents, can be made available to investigators on an as-needed basis through Centro Presente and undersigned counsel.

⁶ Massachusetts' prohibition on discrimination in places of public accommodation, M.G.L.c. 272 § 98, is primarily enforced through the remedial scheme set forth in M.G.L. c. 151B.



The patterns revealed in the testimonies collected to date by Centro Presente indicate that the poor quality of care provided by EBNHC falls particularly harshly on immigrants, constituting impermissible discrimination based on race, color, and national origin. *See* M.G.L. c. 272 § 98; 130 C.M.R. 450.202; 42 U.S.C. § 2000a; *see also* Appendix. Moreover, women – another protected class under the public accommodations law – are heavily impacted by EBNHC’s poor quality of care.

In addition, Massachusetts law forbids discrimination against individuals who receive MassHealth. Specifically, the law prohibits anyone providing “services” from discriminating “against any individual who is a recipient of federal, state, or local public assistance, including medical assistance . . . because the individual is such a recipient.” M.G.L. c. 151B, § 4, cl. 10. The applicable regulations explicitly state that these prohibitions extend to recipients of MassHealth. 130 C.M.R. 450.202 (A). Here, the patterns shown by the incidents brought forward to date indicate that the problems of misdiagnosis and substandard care at EBNHC fall most heavily on those patients who carry MassHealth insurance, in violation of chapter 151B.

For all of these reasons, an investigation of EBNHC must be approached from the perspective of civil rights enforcement.⁷ The AGO has the authority to investigate claims of discrimination under these laws, and to bring lawsuits where necessary to secure compliance. Recently, for example, the AGO exercised its authority in a similar manner where an oral surgery practice was accused of denying access to care for patients with Limited English Proficiency. In the press release following the settlement of discrimination claims against Merrimack Valley Oral Surgeons, the Attorney General stated:

Those in our refugee and immigrant communities face serious barriers in accessing the health care services they need We must do everything we can to ensure that all of our residents have equal access to medical care.⁸

In that matter, the AGO relied on public accommodations law to affirm that a medical clinic cannot discriminate or refuse access to someone seeking service because of their national origin. M.G.L. c. 272 § 98.

⁷ Legal concerns surrounding medical discrimination are well-established in civil rights jurisprudence. Courts have consistently found that patients alleging racial discrimination have viable causes of action based on the inferior care given by medical facilities, especially those accepting public funds. *See, e.g., U.S. v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1044 (5th Cir. 1984) (“One specific area of discrimination in services . . . at the time Title VI was passed was discrimination by hospitals and other medical facilities in the provision of health care services.”); *see also Small v. Hudson*, 322 F. Supp. 519 (M.D. Fla. 1971) (judgment directing defendants to “admit and treat all patients . . . without regard to race or color”). In fact, medical discrimination cases are alarmingly common. *See* Jeffrey Catalano, “Racism Does Not Stop at the Hospital Door,” Todd & Weld (July 2020), *available at* <https://www.toddweld.com/racism-does-not-stop-at-the-hospital-door> (noting the medical discrimination experience of a Haitian-American woman who experienced post-partum hemorrhage).

⁸ *See* Office of Attorney General Maura Healey, Oral Surgery Practice Settles Claims That It Denied Access to Care for Patient with Limited English Proficiency, (Jan. 29, 2021), *available at* <https://www.mass.gov/news/oral-surgery-practice-settles-claims-that-it-denied-access-to-care-for-patient-with-limited-english-proficiency>.

A similar approach is warranted here, especially because impacted patients have consistently expressed concerns that their health needs have not been meaningfully addressed or prioritized due to their race, national origin, or sex.⁹

III. EBNHC's Conduct Violates Public Health Laws

The substandard care described above also runs afoul of Massachusetts public health laws. As the licensing agency under the Executive Office of Health and Human Services, DPH regulates, licenses, and provides oversight of clinics such as EBNHC. DPH's Bureau of Health Care Safety and Quality (BHCSQ) oversees Massachusetts healthcare facilities to ensure patients receive quality care in a safe setting.

EBNHC's conduct violates state law by failing to provide quality care. Examples of such conduct that have been reported by Centro Presente include EBNHC patients where pregnancy has been missed; stomach cancer has gone undiagnosed and untreated; surgery for gallstones has been unduly delayed; and COVID-19 infection has gone undetected. Consequences of these failures have ranged from intense pain and suffering to intubation to death. *See* Appendix A.

In light of these serious incidents, DPH should join with the AGO to investigate EBNHC's compliance with state laws that mandate minimum standards of care for medical facilities.

IV. Requested Action

We respectfully request that AGO and DPH therefore take the following action steps:

- 1) **Formally open a joint investigation, under the concurrent jurisdiction of both the AGO and DPH.** The patterns of substandard care cited above and in the Appendix reveal particular and disproportionate problems with EBNHC's treatment of immigrants, those on MassHealth, and women – necessitating a civil rights investigation. At the same time, the quality of care is also problematic more generally – raising issues that fall under the purview of DPH as well. A joint investigation that scrutinizes both of these concurrent and overlapping bases of liability is therefore appropriate.
- 2) **Conduct a comprehensive joint investigation,** to include interviewing patient-complainants, Centro Presente representatives, and other community members affected by EBNHC's conduct. The investigation should also include a broad-based audit of EBNHC's practices, with a particular eye towards uncovering ways in which immigrants, MassHealth holders, and women in particular suffer the effects of EBNHC's substandard care.
- 3) **Make the findings and results of the joint investigation public.** Particularly in light of the systemic nature of the problems identified, a fully transparent process is vital to restoring community trust and confidence.

⁹ Other laws may apply as well. *See, e.g.*, M.G.L. c 93A (unfair businesses law); 130 CMR 450.202(B) (“[n]o provider may engage in any practice, with respect to any member, that constitutes unlawful discrimination under any other state or federal law or regulation....”).

- 4) **Work with the affected communities, through close coordination with Centro Presente, to arrive at community-based reforms and solutions.** Due to the critical role that community health centers play in eliminating healthcare disparities, it is essential that any reforms to EBNHC’s practices be closely coordinated with the communities they are designed to serve. Those who are closest to the pain must be integral to the solutions. Centro Presente, its members, and affected patients would welcome the opportunity to think creatively and meaningfully about reforms that are necessary to ensure the quality of care that the community needs and deserves – which is the same amount of compassion, communication, and attention regarding their health care as other patient populations.

V. **Conclusion**

“Racial discrimination has shaped so many American institutions that perhaps it should be no surprise that health care is among them. Put simply, people of color receive less care — and often worse care — than white Americans.”¹⁰ Institutions in Massachusetts are not exempt from this reality. As the AGO’s recent report on healthcare disparities exhorted: “The Commonwealth must set ambitious goals for swift progress toward racial justice. There is much work to do to ensure that every resident in the state has an equal opportunity for a healthy life.”¹¹ We applaud this bold stance, and now urge both the AGO and DPH to answer that call to action and help make these ambitious goals a reality. We thank you for your efforts on this matter to date and stand ready to assist you in any manner that we can as this matter moves forward.

Sincerely,

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Oren Sellstrom, Esq.
Sara L. Wilson, Esq.
Counsel for Centro Presente

¹⁰ Austin Frakt, “Bad Medicine: The Harm That Comes From Racism,” *New York Times* (July 8, 2020), available at <https://www.nytimes.com/2020/01/13/upshot/bad-medicine-the-harm-that-comes-from-racism.html>.

¹¹ *Supra* note 2, at 2.

APPENDIX

CASE 1. Maria A.

A young, immigrant Honduran couple in East Boston brought their infant, only a few months old, to the Clinic after he had been crying and displaying signs of illness. The staff at EBNHC attended to the baby, concluded there were no medical concerns, and sent the family home. The following day, the couple brought their infant in for care again to EBNHC because his symptoms had worsened. This time, the staff called an ambulance to rush the infant to a hospital downtown – but the baby died en route. This occurred in early July 2020. According to the family’s testimony, the Clinic indicated, in Spanish, “sudden infant death syndrome.”

Insurance: MassHealth

CASE 2. Claudia B.

In 2018, Claudia B., a Salvadoran immigrant and resident of East Boston, took an at-home pregnancy test that came back positive. Approximately a week later, she went to the Emergency Room of EBNHC because she had experienced spotting. After telling the nurse that she had a positive at-home pregnancy test, the nurse collected a urine sample. After the results of the urine test came back, the ER doctor told the patient that she was not pregnant and that it was normal for women to spot even if they were not menstruating. The patient continued to have spotting after visiting the clinic, and approximately a week later took a second at-home pregnancy test. The second test was also positive, so she decided to go to the Emergency Room at the Boston Medical Center because she was worried that the spotting had continued. At BMC, several tests were performed, including bloodwork. The results of the bloodwork confirmed that she was in fact pregnant.

Insurance: MassHealth

CASE 3. Edith C.

A Salvadoran immigrant and resident of East Boston took her two-year-old son to EBNHC in early September 2021 because she found a bump on his penis. The nurse examined the child, and they were sent home. Approximately a week later, the child’s condition worsened. His penis was swollen and red, had a bad odor, and he was experiencing a great deal of pain. The woman decided to take her son to the Emergency Room at the Boston Medical Center. While at BMC, she was asked why she hadn’t taken her son to EBNHC where she explained that she had. At BMC, the child was examined by four doctors, who found that he had an advanced infection caused by bacteria. As a result of the infection, he had suffered for eight days. He was prescribed antibiotics, ointments, and pain medicine. According to the mother’s testimony, the doctors explained to her that the infection was advanced and should have been treated earlier.

Insurance: MassHealth

CASE 4. Gloria D.

Around September 2020, Gloria D. went to EBNHC because she was experiencing stomach pain. According to her testimony, she was diagnosed by EBNHC as having gastritis and was provided medication. Sometime later, she returned to EBNHC due to continued abdominal pain, yet her treatment resulted in the same outcome. In late March 2021 she once again went to EBNHC and was again told she had gastritis and was sent home with no ultrasound, x-ray or any sort of diagnostic. The following day the pain was excruciating and she returned to EBNHC, where staff finally performed an ultrasound and discovered that Gloria D. was suffering from gallstones. They gave her some pills and assured her that the pain would subside if she kept taking the medication and she was sent home.

By the weekend, she was in so much pain she went straight to Boston Medical Center Emergency Room where they performed an ultrasound and determined that the stones were causing a blockage in her bile duct, and she needed an operation. They kept her in the hospital for 5 days until they could operate on her. In the meantime, after receiving a call from BMC, EBNHC called the patient to tell her that they had reviewed her case and had determined that she needed another appointment, after she had already been admitted to BMC for the operation. For the five days that she was hospitalized she was unable to attend to the needs of her special needs child who remained at home.

Insurance: MassHealth

CASE 5. Juan E.

In March of 2021, Juan E., age 39, went to EBNHC because he was experiencing chest pain, loss of appetite, and had been losing weight. At that time, he was told that the chest pain was caused by a panic attack, and that he was experiencing depression. In late May he had severe stomach pain and returned to EBNHC, where they conducted a bacteria test and prescribed him antibiotics.

Approximately one week later, he returned to EBNHC for a follow up where he told the doctor his conditions had worsened and that the antibiotics were not working. The doctor changed the antibiotics and performed an ultrasound, which showed a spot (“mancha”). A few days later, he was experiencing unbearable pain and went to the Emergency Room at Boston Medical Center.

At BMC he was given stronger antibiotics and was hospitalized for approximately one week. On June 25th, a few days after being discharged, he returned to BMC because he couldn't stand the pain, and several additional tests were performed. These tests revealed a tumor and on July 2nd he was diagnosed with stage 4 stomach cancer. He died on July 30 of stomach cancer.

Insurance: MassHealth

CASE 6. Chloe F.

Chloe F., age 19, has been a patient of the East Boston Neighborhood Health Center since she was born. In early November 2021, Chloe began to feel a strong pain in her chest, along with fatigue and heart palpitations. Chloe's mother, Inez, testified that she had noticed a deterioration in her daughter's health during that time. Chloe had been treated for anemia for several years. In mid-November, Chloe scheduled an appointment at EBNHC, and at the appointment she reported the symptoms she had been experiencing. At the same appointment, a nurse performed an EKG, and the doctor explained that the results of the EKG were normal. According to Chloe's testimony, the doctor assumed that she had an irritation in her lungs and prescribed ibuprofen. Chloe subsequently found that there was a tachycardia diagnosis on her Mychart account (an on-line account), which she was not informed of at the time of the appointment nor in any other follow up communication from the health center.

In late December, Chloe went to the ER at EBNHC because she was still experiencing pain. At this time the pain was on the left side of her chest and the pain would wake her up every night. When she arrived at the ER, she was told that the wait would be four to five hours, and she decided to leave. Her symptoms persisted, and by February the pain was constant. Chloe reports that she could not move or laugh without feeling pain, and that she would feel tired after just walking one block. On February 9th, 2022, Chloe's mother decided to take her to the ER at Massachusetts General Hospital. While at Mass General, an EKG was performed, and the results came back normal. In order to try to find the cause of Chloe's symptoms, MGH doctors performed additional tests, including an X-ray and CT scan, which revealed a mass on her left lung. Chloe was immediately hospitalized for 4 days and 3 nights, and after a biopsy, she was diagnosed with stage three cancer. The doctors found that Chloe has a large cancerous tumor between her heart and left lung, and she began chemotherapy treatment on February 25th.

Insurance: MassHealth

CASE 7. Jose H.

In the last week of December 2021, Jose H, a Salvadoran immigrant and resident of Revere, took a COVID-19 test at EBNHC. Approximately 10 days later, he returned to EBNHC because he had not received his test results. When he inquired about his test, the clinic staff informed him that his COVID test had come back positive. Jose became concerned because he had continued to work while he was waiting for his test result, and he worried that his continued interaction with coworkers and family members increased the risk of spreading the virus. According to his testimony, at the time of taking the test, it was not explained to him how he would receive the results.

CASE 8. Amelia I.

Amelia I. is a Honduran woman in her 50s who in 2020, at the beginning of the pandemic, fell ill with flu-like symptoms. She went from her home in Chelsea to the EBNHC clinic in East Boston but was not tested for COVID and was sent home with some basic pain relievers. According to her testimony she asked to be tested but they did not do so. The following day her situation deteriorated to the point where an ambulance was called, and she was rushed to Mass General where she would end up being intubated and in a coma for 45 days due to COVID. She spent additional months in rehab before finally getting back to her home, weak and still suffering from the after-effects of a severe COVID infection.

Insurance: MassHealth

CASE 9. Florinda M.

Between October and November 2020, Florinda, a Salvadoran immigrant and resident of East Boston, went to the Emergency Room at Boston Medical Center because she was experiencing severe pain in her abdominal area. While at BMC, a scan was performed and the doctor who attended her told her that she had polyps in her gallbladder and intestine. The doctor also told her that the polyps had been found in 2017, and that her primary care physician at EBNHC should have told her of that condition at the time. According to her testimony, Florinda had not been given this information in 2017. After this visit to BMC, Florinda continued to experience intense pain and went to EBNHC several times between November 2020 and March 2021. During this period, according to Florinda she was prescribed omeprazole to treat the pain. In March of 2021, while at one of her frequent appointments, she insisted that the pain was unbearable. The doctor referred Florinda to a surgeon at Boston Medical Center. She had an appointment with the surgeon at the end of April 2021, and surgery in May 2021.

Insurance: MassHealth